P.R. No. 192/06
Presented by Sri ... dated 24/12/06

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

[CHHATTISGARH] Single Bench

SECOND APPEAL NO. 38 /2006

Appellant/ Appellant (in first Appeal Plaintiff : Heera Bai, W/o. Aghnu Satnami, aged about 45 years R/o. Vill – Bhainsbod, Thana Sahaspur-Lohara Tah. Kawardha, Distt. Kabirdham (C.G.).

VERSUS

Respondents/ Respondents (In first appeal Defendants

1. Jahid Khan, S/o. Rashid Khan, aged about 28 years.
2. Hasan Khan, S/o. Rashid Khan, aged about 34 years.
3. Yusuf Khan, S/o. Rashid Khan, aged about 29 years.
4. Jabid Khan, S/o. Rasid Khan, aged about 25 years.

   No. 1 to 4 R/o. Gram Gandai, Tah. Chuikhadan, District-Rajnandgaon (C.G.)
5. State of Chhattisgarh, Through District Collector, Kawardha (Kabirdham).

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SECOND APPEAL UNDER SECTION 100 OF THE CODE OF

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No. 38 of 2006

Appellant/Plaintiff : Heera Bai

Vs.

Respondents/defendants : Jahid Khan and others

ORDER

POST FOR 8 /6/2006

Sd/-
Dhirendra Mishra
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL NO. 38 OF 2006

Appellant/plaintiff : **Heera Bai**

Vs.

Respondents/defendants : **Jahid Khan and others**

Shri Rajeev Shrivastava, learned counsel for the appellant/plaintiff.

ORDER
(Passed on 8 .05.2006)

Dhirendra Mishra, J

Heard on admission.

2. The appellant/plaintiff has preferred this second appeal under Section 100 of the Code of Civil Procedure against the concurrent judgment and decree passed by both the Courts below whereby the suit preferred by the plaintiff for declaration of title and perpetual injunction has been dismissed. (Parties hereinafter shall be referred to as per their description before the court below).

3. As per the plaint allegations plaintiff is the owner of the suit land bearing Khasra Nos. 116/1, 116/3 and 116/4, area 2.80 acres. She obtained a loan of Rs.8,000/- from one Membai after pledging the land bearing Khasra No.116/3, area 0.80 acres. However, she had executed a sale deed in favour of Menbai on 21.04.1998. Defendant No. 3 runs a grocery shop at Gandai and also does money lending. The plaintiff took a lone of Rs.10,000/- from defendant No. 3 for purchasing bullock by pledging her land bearing K. No. 34/21 and K.No.116/1 and defendant No. 3 got executed an agreement in the name of his servant namely Aatmaram. However, she sold her land bearing K.No. 34/21 to Chumman and repaid the loan of defendant No. 3. She also got executed a sale

deed of K.No. 116/3 through Membai in favour of defendant No. 3 and thus she owed a loan of Rs.20,000/-. Defendant No. 3 by practicing fraud got executed the sale deeds dated 12.06.2000 and 24.05.1999 by the plaintiff in favour of his brothers and himself respectively on the promise of boring tube well in her land.

4. Defendants No. 1 to 4 have denied the allegations of the plaint in their written statement and have stated that they have purchased K.No. 116/3 from Membai for a consideration of Rs. 30,600/- vide registered sale deed 24.05.1999. Similarly the plaintiff had sold her land bearing K.No. 116/1 and K.No. 116/4, area 1.60 acres for a consideration of Rs.69,500/- through registered sale deed.

5. On the basis of pleadings of the respective parties, issues were framed and statements of the witnesses were recorded by the trial Court. Learned Civil Judge dismissed the suit of the plaintiff vide judgment dated 26.07.2004 by recording a finding inter alia that the plaintiff has failed to prove that she had mortgaged the suit land described in schedule 'A' in lieu of loan with the defendants and Membai, registered sale deed of the suit land was not got executed by the defendants by practicing deceit contrary to law, the sale deeds dated 24.05.1999 and 12.06.2000 are not null and void and that the plaintiff is not entitled for any perpetual injunction against interference over the suit land by the defendants.

6. The plaintiff preferred appeal before the lower appellate Court and the same was also dismissed vide judgment dated 25.10.2005 with the identical finding.

7. Learned counsel for the appellant/plaintiff submitted that from the evidence available on record it is established that the plaintiff continued to be in possession over the suit land and even then the Courts below have refused to grant perpetual injunction to her only by recording a finding that the plaintiff had failed to prove that the sale deed was executed by practicing fraud against loan transaction and the evidence of possession available on record has been totally ignored.

8. Placing reliance on the judgment of the Supreme Court delivered in the matter of **Krishna Ram Mahale (dead) by his L.Rs. Vs. Mrs. Shobha Venkat Rao** reported in **AIR 1989 S.C. 2097** and in the matter of **Lallu Yeshwant Singh (dead) by his L.R. Vs. Rao Jagdish Singh and others** reported in **AIR 1968 S.C. 620 (V 55 C 127)** it is argued by learned counsel for the appellant/plaintiff that the plaintiff was in possession and the defendants cannot be permitted to take forcible possession except by recourse to law.

9. Further relying on the judgment of M.P. High Court reported in **2000(2) M.P.L.J. 316** in the matter of **Gajendra Singh Vs. Mansingh and others** it is argued that where the plaintiff is in settled possession even without title, his possession can be protected as against true owner till he is evicted by lawful order or due process of law.

10. Learned counsel for the appellant/plaintiff submitted that following substantial questions of law arise for adjudication of this second appeal;

(i) "Whether in the facts and circumstances of the case the Courts below were justified in holding that the plaintiff did not mortgage the suit land?

(ii) "Whether under the facts and circumstances of the case when the plaintiff was in possession of the suit land, the Courts below were justified in refusing the decree of perpetual injunction to the plaintiff?"

(iii) "Whether the Courts below were justified in drawing inference regarding nature of transaction between plaintiff and defendants by omitting the evidence regarding possession of the land?"

11. I have heard learned counsel for the appellant/plaintiff.

12. So far as the first proposed substantial question of law is concerned, on the basis of oral and documentary evidence available on record both the Courts below have recorded a concurrent finding of fact that the plaintiff has failed to prove that the sale deed was got executed by the defendants by practicing fraud and misrepresentation. After discussing the oral evidence available on record it has been held that the plaintiff executed the sale deeds dated 24.05.1999 and 12.06.2000 voluntarily and without any undue influence for consideration of Rs. 30,600/-and Rs.69,500/- respectively. The lower appellate Court has discussed the statements of the plaintiff and her witnesses Aghnu (PW-2), Jaankunwar (PW-3), Iswari (PW-4) and Lalaram (PW-5) in detail and on the basis of their statements has arrived at the above conclusion.

13. So far as the second and third proposed substantial questions of law are concerned, learned District Judge in paragraph – 17 of his judgment has considered the argument of counsel for the plaintiff in this regard and has recorded a finding that possession of the defendants over the suit land is established from the stipulations of the documents of Ex.P/1 to P/3 which pertain to the sale deeds of the suit land wherein it has been mentioned that possession of the land has been transferred to the purchaser and the plaintiff has not filed any document or revenue record for rebuttal of this stipulation and her own witness Jaankunwar (PW-3) has admitted in paragraph – 4 of his statement that defendant No. 3 Yusuf harvested the gram crop last year.

14. Learned counsel for the appellant/plaintiff extensively referring to the statements of the plaintiff's witnesses has tried to establish that the plaintiff continued to be in possession of the suit land and therefore, she was entitled to protect her possession. However, the plaintiff has herself admitted in paragraph – 22 of her statement that last year defendant No. 3 Yusuf had harvested the Khariff and Rabi crop and she did not lodge any report in the police station for the first time and further she has claimed that she had lodged the report in the police station against defendant Yusuf but she has not filed copy of that report in suit.

15. The law laid down in the aforesaid judgments cited by learned counsel for the appellant/plaintiff is that where a party is in settled possession of the suit land he is entitled to protect the same even against the true owner and he cannot be dispossessed except by following due process of law. However, in the instant case there is a finding of fact recorded by the lower appellate Court which is based on the oral and documentary evidence available on record that possession of the defendants over the suit land is established and in view of the above finding of fact the judgments cited above have no application in the present case.

16. On the basis of aforesaid discussions, this Court is of the considered opinion that no substantial question of law as proposed by counsel for the appellant is made out for adjudication of this appeal. The appeal being devoid of merit is liable to be dismissed at the motion stage itself and is accordingly dismissed.

Sd/-
Dhirendra Mishra
Judge